

Montana Water Court
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FILED
08/28/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-0503-R-2022
Nordlund, Julia
11.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

CLAIMANTS: Judy L. Brownell; Robert W. Brownell; GBOB
LLC

NOTICE OF INTENT TO APPEAR: Frank DeHaan

CASE 41H-0503-R-2022

41H 132218-00

41H 210820-00

41H 210821-00

41H 210822-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claims 41H 132218-00, 41H 210820-00, 41H 210821-00 and 41H 210822-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H).

2. Claims 41H 210820-00, 41H 210821-00 and 41H 210822-00 are all implied claims that were generated from claim 41H 132218-00.

3. Claims 41H 210820-00, 41H 210821-00 and 41H 210822-00 appeared with the following issue remark:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A HEADGATE.

Clara Brownell and Robert Brownell ("Brownell") filed Statements of Claims for the three claims. Each claimed two points of diversion, with both pump and headgate with ditch/pipe listed as the means of diversion. However, the Statements of Claim did not specify the means of diversion at each point.

4. Claim 41H 132218-00 received an NOIA from Frank Dehann. In the October 18, 2022 Order the Court stated Mr. DeHann may submit comments if Claimants attempt to change claim 41H 132218-00.

5. The Claimants Brownell and GBOB LLC were ordered to file evidence clarifying the claims' means of diversion.

6. On April 10, 2023 Claimants Brownell filed Notice of Filing of Evidence and Request for Corrections. Claimants stated that all four claims should reflect the same diversion means as was claimed on all four claims' statements of claim. Claims 41H 210820-00, 41H 210821-00 and 41H 210822-00 are correct as decreed. However, 41H 132218-00 should be corrected pump/headgate w/ditch or pipeline for both points of diversion.

7. Further, the Point of Diversion No. 2 has been historically named the Irvine Ditch as it appears on claim 41H 132218-00. The Claimants Brownell have requested that the Irvine Ditch be added to claims 41H 210820-00, 41H 210821-00 and 41H 210822-00 for Point of Diversion No. 2. No further objections were made to the requests.

8. Claimant GBOB LLC filed a Response on 5/25/2023 agreeing with the

requested changes to the claims.

9. An additional issue remark appearing on claim 41H 132218-00, stating:

DITCH NAME AND MEANS OF DIVERSION WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Further, claims 41H 210820-00, 41H 210821-00 and 41H 210822-00 received an additional issue remark stating:

DICH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

These issue remarks are notice-type issue remarks. They provide notice of changes made to the claims since the issuance of the Basin 41H Temporary Preliminary Decree. The claims did not receive any objections concerning the ditch name or means of diversion modifications. The remarks have served their purpose of providing notice and should be removed from the claims.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

3. The information provided by the claimants is sufficient to resolve the issue remarks appearing on the above listed claims.

RECOMMENDATIONS

The issue remarks should be removed from claims 41H 132218-00, 41H 210820-00, 41H 210821-00 and 41H 210822-00, the recommended changes in the Findings of Fact should be accepted and the objection should be dismissed. Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the issue remarks have been removed from the claim abstracts.

ELECTRONICALLY SIGNED AND DATED BELOW.

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 132218-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

ROBERT W BROWNELL
9470 DRY CREEK RD
BELGRADE, MT 59714 8194

JUDY L BROWNELL
9470 DRY CREEK RD
BELGRADE, MT 59714 8194

GBOB LLC
% GUS HOLCOMB
1627 W MAIN ST STE 131
BOZEMAN, MT 59715 4011

Priority Date: MAY 31, 1865

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 112.20 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 31.00

Source Name: DRY CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESW	26	2N	4E	GALLATIN

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Ditch Name: NISBET DITCH

2		NWSESW	26	2N	4E	GALLATIN
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Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Ditch Name: IRVINE DITCH

Period of Use: MAY 1 TO SEPTEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	31.00		E2SW	26	2N	4E	GALLATIN
Total:	31.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

132218-00 210820-00 210821-00 210822-00

THE IMPLIED CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. 41H 210820-00, 41H 210821-00, 41H 210822-00.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 210820-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

ROBERT W BROWNELL
9470 DRY CREEK RD
BELGRADE, MT 59714 8194

JUDY L BROWNELL
9470 DRY CREEK RD
BELGRADE, MT 59714 8194

GBOB LLC
% GUS HOLCOMB
1627 W MAIN ST STE 131
BOZEMAN, MT 59715 4011

***Priority Date:** APRIL 30, 1866

***Type of Historical Right:** DECREED

***Purpose (use):** IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 33.66 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 31.00

***Source Name:** DRY CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESW	26	2N	4E	GALLATIN
Period of Diversion:	MAY 1 TO SEPTEMBER 30					
Diversion Means:	PUMP/HEADGATE W/DITCH OR PIPELINE					
Ditch Name:	NISBET DITCH					
2		NWSESW	26	2N	4E	GALLATIN
Period of Diversion:	MAY 1 TO SEPTEMBER 30					
Diversion Means:	PUMP/HEADGATE W/DITCH OR PIPELINE					
Ditch Name:	IRVINE DITCH					
*Period of Use:	MAY 1 TO SEPTEMBER 30					

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	31.00		E2SW	26	2N	4E	GALLATIN
Total:	31.00						

Remarks:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 132218-00.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 210821-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: ROBERT W BROWNELL
9470 DRY CREEK RD
BELGRADE, MT 59714 8194

JUDY L BROWNELL
9470 DRY CREEK RD
BELGRADE, MT 59714 8194

GBOB LLC
% GUS HOLCOMB
1627 W MAIN ST STE 131
BOZEMAN, MT 59715 4011

***Priority Date:** APRIL 30, 1866

***Type of Historical Right:** DECREED

***Purpose (use):** IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 33.66 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 31.00

***Source Name:** DRY CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESW	26	2N	4E	GALLATIN

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Ditch Name: NISBET DITCH

2		NWSESW	26	2N	4E	GALLATIN
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Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Ditch Name: IRVINE DITCH

***Period of Use:** MAY 1 TO SEPTEMBER 30

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	31.00		E2SW	26	2N	4E	GALLATIN
Total:	31.00						

Remarks:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 132218-00.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 210822-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: ROBERT W BROWNELL
9470 DRY CREEK RD
BELGRADE, MT 59714 8194

JUDY L BROWNELL
9470 DRY CREEK RD
BELGRADE, MT 59714 8194

GBOB LLC
% GUS HOLCOMB
1627 W MAIN ST STE 131
BOZEMAN, MT 59715 4011

***Priority Date:** MAY 31, 1867
***Type of Historical Right:** DECREED
***Purpose (use):** IRRIGATION
Irrigation Type: FLOOD
***Flow Rate:** 33.66 GPM
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 31.00
***Source Name:** DRY CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESW	26	2N	4E	GALLATIN
Period of Diversion:	MAY 1 TO SEPTEMBER 30					
Diversion Means:	PUMP/HEADGATE W/DITCH OR PIPELINE					
Ditch Name:	NISBET DITCH					
2		NWSESW	26	2N	4E	GALLATIN
Period of Diversion:	MAY 1 TO SEPTEMBER 30					
Diversion Means:	PUMP/HEADGATE W/DITCH OR PIPELINE					
Ditch Name:	IRVINE DITCH					
*Period of Use:	MAY 1 TO SEPTEMBER 30					

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	31.00		E2SW	26	2N	4E	GALLATIN
Total:	31.00						

Remarks:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 132218-00.